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BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL
DEVELOPMENT PERMIT ISSUED BY THE
CITY OF BREMERTON TO LAMBERT
SCHUYLER AND VICTOR L. WOWARAS
DAVID L. ROBINSON, et al.,
Appellants,
v.
CITY OF BREMERTON, VICTOR L.
WOWARAS AND LAMBERT SCHUYLER,
Respondents.

SHB Nos. 77-2, 77-3, 77-4
and 77-5

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

These matters, requests for review of a substantial development permit issued by the City of Bremerton for the construction of 144 apartment units came on for formal hearing before Arthur Brown, W. A. Gissberg, Chris Smith, Robert F. Hintz, James S. Williams and William A. Johnson on March 17, 1977 in Bremerton, Washington.

Appellants David L. Robinson, Henry C. Clark, Mary Wagner, and Cecilia Topness appeared pro se; respondent permittee Victor Wowaras

1 appeared pro se; Nick Nickum represented the property owner, Lambert
2 Schuyler; Assistant City Attorney Andrew Olsen appeared for respondent
3 City of Bremerton.

4 Having heard the testimony, having visited the site, and having
5 examined the exhibits and exceptions of the parties, the Shorelines
6 Hearings Board makes the following

7 FINDINGS OF FACT

8 I.

9 The project as authorized by the substantial development permit
10 at issue in these requests for review is the construction of a 144-unit
11 apartment complex.

12 Exhibit RS-14, the site plan which was made a condition of
13 the permit, shows the 144 units arranged in nine two-story buildings,
14 a swimming pool, and 174 parking spaces provided adjacent to the
15 individual buildings.

16 II.

17 The site is located on approximately 4.5 acres¹ at the intersection
18 of Tracyton Beach Road and Sheridan Road on the shorelines of the
19 Port Washington Narrows in East Bremerton, Washington. A strip of
20 beach between the beach road and the Narrows, approximately eighty feet
21 from actual construction, is a part of the subject parcel but would
22 remain undeveloped.

23 Several four and six-plexes lie immediately to the southeast of
24 the property with concentrated duplexes located to the east across
25

26 1. This figure was cited by the City of Bremerton at hearing
27 as the gross acreage of the subject parcel although no survey results
were presented.

1 the Sheridan Road. Single family homes dominate the areas to the
2 north and northwest of the property, the latter being separated by a
3 deep ravine. The Tracyton Beach Road running NW to SE is a scenic
4 two lane route along the Port Washington Narrows.

5 The site itself is generally flat with a bank of approximately a 40%
6 grade descending to the beach road. Little attractive vegetation now
7 exists on the site with the exception of two large madrona trees.

8 A combination of existing development and topographical restraints
9 limit ingress or egress from the site to the Sheridan Road boundary.
10 Safety considerations further limit to one the number of access roads which
11 can be constructed on this boundary.

12 III.

13 On October 29, 1975 the subject property was annexed to the City
14 of Bremerton from Kitsap County. The site was rezoned on May 5, 1976,
15 from R-1 to R-2 which permits multi-family units and has a potential
16 density of seventy units per acre. The City of Bremerton's 1966
17 Comprehensive Plan indicates medium density residential for the site.
18 Compared to recent city approvals under the zoning code, the instant
19 proposal is in the middle of the range of permitted high density
20 developments.

21 At the time the property was annexed, neither the City of Bremerton
22 nor Kitsap County had an adopted master program. No environmental
23 designation for the subject land had been made by the City of Bremerton
24 in its draft master program prior to the issuance of the instant permit.
25 On February 9, 1977, a designation of "urban residential" for the site
26 was adopted by the city as an amendment to its draft master program.

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1 IV.

2 Application for a substantial development permit was made by
3 Mr. Wowaras, real estate broker for the parcel, on November 10, 1976.
4 An environmental checklist accompanied the application. On
5 December 17, 1976, a Declaration of Non-Significance was issued by
6 the City of Bremerton's responsible official.

7 V.

8 At the public hearing on the application held December 22, 1976,
9 concerns regarding the following aspects of the site and possible
10 impacts of the project were expressed by neighborhood residents:

- 11 1. Retention of the two Madrona trees whose roots stabilize
12 the bank.
- 13 2. Erosion of the bank from construction on or near its crest.
- 14 3. Increase in traffic; ingress and egress from the site.
- 15 4. Storm drain capacity.
- 16 5. Sanitary sewer inadequacy.

17 The commissioners responded that traffic and engineering problems
18 "would be handled at the time of application for a building permit".

19 City representatives testified before the Shorelines Hearings Board
20 that construction under a sewer grant of a new interseptor due to
21 commence in early summer would alleviate the sewage impact of the
22 project. The City Engineer further testified that the existing
23 storm drain was more than adequate to handle the increase from the
24 proposed units. Soils analyses of the site would be required under the
25 Uniform Building Code upon application for the building permit.

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VI.

Following the council hearing, the City Commissioners unanimously approved the permit subject to four conditions:

1. That the site be developed essentially as proposed on the site plan presented with the permit application.
2. Vegetation along the slope on the southwest side of the site shall be maintained and augmented to insure slope stability and to maintain the natural character of the slope.
3. Large madrona trees on the shoreline side of the site should be preserved if possible.
4. Owner is encouraged to dedicate the property between Tracyton Beach Road and the shoreline to the City of Bremerton for inclusion in the Lions Community Playfield/Tracyton Beach recreation area.

VII.

Subsequent to the issuance of the permit and responsive to concerns expressed by neighborhood residents, modifications in the siting of the units were made. These adjustments were incorporated in a site plan and architectural drawings identified as exhibit RS-15. These plans were before the Planning Commission on December 28 and the City Commissioners on January 22, 1977, in their review and passage of amendments to the rezone ordinance applicable to the instant site. With the revision to the ordinance the following conditions were imposed:

1. Development of the site shall be essentially the same as the site plan attached hereto marked "Exhibit B",

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1 dated 12/28/76.²

2 2. Vegetation along the slope on the southwest side of
3 the site shall be maintained and augmented to insure slope
4 stability and to maintain the natural character of the slope.

5 3. The large madrona trees on the southeast side of the
6 site will remain until such time as they are declared a hazard.

7 4. Owner is encouraged to dedicate the property between
8 Tracyton Beach Road and the shoreline to the City of Bremerton
9 for inclusion in the Lions Community Playfield / Tracyton Beach
10 recreation area.

11 5. Access should be controlled, particularly at the
12 intersection of Lebo, Sheridan and Tracyton Beach Road, with
13 approval of ingress and egress by Police-Traffic and Engineering
14 Departments.

15 VIII.

16 The permittee agreed in open hearing before the Shorelines Hearings
17 Board to commit \$30,000.00 or approximately \$200.00 per proposed unit to
18 the landscaping of the site and to execute the necessary legal agreement
19 to dedicate to the city for park purposes the strip of beach seaward
20 of Tracyton Beach road.

21 IX.

22 Any Conclusion of Law hereinafter stated which is deemed to be a
23 Finding of Fact is adopted herewith as such.

24 From these Findings, the Shorelines Hearings Board comes to
25 these

26 CONCLUSIONS OF LAW

27 I.

In reviewing the validity of a substantial development permit

2. Such siting is further removed from the crest than that
shown in RS-14 authorized under the substantial development permit.

FINAL FINDINGS OF FACT,

1 the Shorelines Hearings Board evaluates the consistency of the
2 proposed project with the policies and provisions of the Shoreline
3 Management Act (SMA), the Department of Ecology guidelines and
4 regulations issued pursuant thereto and the City of Bremerton
5 Draft Master Program "so far as can be ascertained". In this case,
6 the subject property was annexed prior to approval of the Kitsap
7 Master Program and the City of Bremerton's Draft Master Program was
8 not amended to include the instant site until after the subject permit
9 had been processed and issued. Therefore with regard to the matter now
10 before the Board, no approved master program is applicable and no
11 provision of any draft master program "can be ascertained".

12 II.

13 While not identified as a preferred use in the SMA, multiple
14 family dwellings can be a permitted use on the shorelines. However,
15 RCW 90.58.020 provides:

16 . . .

17 It is the policy of the state to provide for the
18 management of the shorelines of the state by planning
19 for and fostering all reasonable and appropriate
20 uses. . .

21 This policy contemplates protecting against adverse
22 effects to the public health, the land and its
23 vegetation and wildlife,

24 . . .

25 Permitted uses in the shorelines of the state
26 shall be designed and conducted in a manner to
27 minimize, insofar as practical, any resultant
damage to the ecology and environment of the
shoreline area and any interference with the
public's use of the water. (Emphasis added).

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30 AND ORDER

1 Further, WAC 173-16-060(8)(a) provides:

2 Subdivisions should be designed at a level
3 of density of site coverage and of occupancy
4 compatible with the physical capabilities
5 of the shoreline and water.

6 While this language speaks specifically of "subdivisions", the intent
7 of the guidelines is control of intensive residential development within
8 the shoreline; the apartment complex at issue is an intensive residential
9 development requiring such control.

10 III.

11 This Board has previously held that proper management of the state's
12 shorelines must consider the aesthetics of developments. In SHB No. 115,
13 Department of Ecology v. Mason County and Hama Hama Company, the Board
14 cited with approval the recognition of aesthetics by courts of other
15 jurisdictions as a valid ground for vacation of a permit:³

16 "The reluctance to uphold zoning regulations . . .
17 designed to preserve and improve the visual character
18 of the physical environment on aesthetic grounds alone
19 may be based on the belief that aesthetic evaluations
20 are a matter of individual taste and are thus too
21 subjective to be applied in any but an arbitrary and
22 capricious manner. (citing authority)
23 Accordingly, courts have engaged in a reasoning process,
24 often amounting to nothing more than legal fiction, in
25 order to avoid recognizing aesthetics as an appropriate
26 basis for the exercise of the police power

27 "We feel that this approach . . . is no longer consistent
28 with what we perceive as the modern trend in the law."

29 3. Matter of McCormick v. Lawrence (New York), 8 ERC 1461,
30 upholding the prohibition, for aesthetic reasons, of boathouses on
31 a lake relatively undeveloped and in a relatively pristine state;
32 Donnelly v. Outdoor Advertising Board (Mass.), 8 ERC 1671. Aesthetics
33 alone justifies total ban of bill-boards.

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IV.

As this Board opined in SHB No. 237, Manette Peninsula Neighborhood Association v. City of Bremerton and Richard Person ". . . shoreline areas require special consideration in establishing densities." The proposed density for any shoreline site must be carefully evaluated in terms of the particular characteristics of the site and its environs.

In the Manette case, the Board found that within the urban residential environmental designation, a density of twenty units to the acre was not inconsistent with the SMA, Department of Ecology guidelines and regulations or the Bremerton Draft Master Program.

In the instant case, the density would approach thirty-two units per acre. Nine two story buildings, each containing sixteen dwelling units together with accessory swimming pool and paved parking for 174 cars would be spread over an extensive portion of a 4.5 acre site. Such a design, if constructed, would result in an excessive concentration of population and over-coverage of that portion of the land devoted to development and hence be detrimental to the shoreline environment. Particularly is this so considering that the ingress and egress of such a concentrated population is limited to one narrow neck of the congested site.

Because of the identified deficiencies in both design and density, the project as proposed by the permittee is not consistent with the policies of the SMA or the Department of Ecology guidelines promulgated pursuant thereto. However, a permit which would contain the conditions expressed in this Order would be consistent with such policies. Ordinarily this Board would not presume to determine a level of density and design.

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1 That function should properly remain at the local governmental level.
2 The thrust of the Board's Proposed Order was simply to vacate the
3 permit, thereby enabling the city to establish a density somewhere
4 between those mentioned in the Proposed Findings and Conclusions.
5 However, parties to this proceeding, in their exceptions filed
6 herein, have requested that this Board establish a maximum density.
7 Accordingly, we have accepted that invitation and do so in the
8 interests of expediting the ultimate resolution of the questions
9 surrounding the use of the land at issue.

10 V.

11 RCW 43.21C.090 provides the standard of review for the Shorelines
12 Hearings Board in its review of alleged SEPA violations:

13 . . . In any action involving an attack on a
14 determination by a governmental agency relative
15 to the requirement or the absence of the requirement,
16 or the adequacy of a "detailed statement", the
17 decision of the governmental agency shall be accorded
18 substantial weight.

17 VI.

18 The environmental checklist as supplemented⁴ together with the
19 imposition of mitigative conditions regarding construction do provide
20 support for the responsible official's determination that the
21 project would not "significantly affect the environment"; the issuance
22 of a declaration of non-significance was not clearly erroneous.

23
24 4. Testimony at hearing regarding the City of Bremerton's
25 consideration of environmental consequences was supplemented post
26 hearing by both appellants (Attachment A - Response to Exceptions)
and Respondents (Motion for Presentation of Additional Evidence).
These documents were accepted and reviewed by the Board.

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1 However, mitigative conditions must be tightened to ensure control
2 of any adverse environmental impacts resulting from the development.

3 VII.

4 Any Finding of Fact hereinafter stated which is deemed to be a
5 Conclusion of Law is adopted herewith as such.

6 From these Conclusions of Law, the Board enters this

7 ORDER

8 The substantial development permit issued by the City of
9 Bremerton to Victor L. Wowaras is affirmed; this matter is remanded
10 to the City of Bremerton for reissuance of the permit subject to
11 the following additional conditions:

- 12 1. No development is to occur within that area of the subject
13 parcel designated in the draft master program on February 9,
14 1977 as "Conservancy".
- 15 2. Any development must be set back from the crest of the
16 bluff a minimum of ten feet.
- 17 3. Density of the project is not to exceed thirty-two units per
18 buildable acre, such acreage calculated to exclude at a minimum
19 all acreage protected through conditions one and two above. In no
20 event is the total number of units to exceed 112.
- 21 4. Through legal agreements approved as to form and content by
22 the city attorney of Bremerton, the permittee shall dedicate
23 to the City of Bremerton for park purposes that portion of
24 the subject parcel lying seaward of the Tracyton Beach road.
- 25 5. The permittee shall commit a minimum of \$200.00 per
26 permitted unit to landscaping of the site.
- 27 6. Vegetation along the slopes of the site shall be maintained
 and augmented to insure slope stability and to maintain
 the natural character of the slope.
7. The large madrona trees on the southeast side of the site will
 remain until such time as they are declared a hazard.
8. Access should be controlled, particularly at the intersection
 of Lebo, Sheridan and Tracyton Beach Road, with approval of
 ingress and egress by Policy-Traffic and Engineering Departments.

FINAL FINDINGS OF FACT,

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1 DATED this 27th day of May, 1977.


2 SHORELINES HEARINGS BOARD

3 
4 W. A. GISSBERG, Chairman

5 
6 CHRIS SMITH, Member

7 
8 ROBERT F. HINTZ, Member

9 
10 JAMES S. WILLIAMS, Member

11 
12 WILLIAM A. JOHNSON, Member

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26 FINAL FINDINGS OF FACT,
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